

DRUG AND ALCOHOL PROGRAM MANAGER

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TRANSIT OPERATOR	
Contact Person	
Date	
Auditor 1	
Auditor 2	

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Num	Question	REGULATORY CITATIONS
1	TO START OFF, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT THE REGULATIONS	
2	Do you have in your possession, or access to, a current copy of the Federal Transit Administration drug and alcohol testing regulations 49 CFR Part 655 – Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations (published August 9, 2001)?	<p>Section 655.11 states: “Each employer shall establish an anti-drug use and alcohol misuse program consistent with the requirements of this part.”</p> <p>The DAPM should have available 49 CFR Part 655 to use as a resource in complying with the FTA drug and alcohol testing requirements.</p>
3	Do you have in your possession, or access to, a current copy of the DOT drug and alcohol testing regulations 49 CFR Part 40 - Procedures for Transportation Workplace Drug and Alcohol Testing Programs (published December 19, 2000 and amended August 9, 2001) ?	<p>Section 40.11(a) states: “As an employer, you are responsible for meeting all applicable requirements and procedures of this part.”</p> <p>In order to fully comply with Section 40.11, the DAPM should have available Part 40 to use as a resource.</p>
4	NOW, I WOULD LIKE TO ASK SOME QUESTIONS ABOUT YOUR POLICIES AND PROCEDURES.	
5	Does this transit system maintain a record that each employee has received a copy of the anti-drug and alcohol misuse policy, or a written notice that the policy is available for review?	<p>Section 655.15 states: “The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee . . .”</p> <p>Section 655.16 states: “Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer’s anti-drug and alcohol misuse policies and procedures.”</p>

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6	Were the actual job duties at this transit system reviewed to decide who performed safety-sensitive functions?	<p>Section 655.15 states: “. . .The [policy] statement must be made available to each covered employee, and shall include the following: . . .</p> <p>(b) The categories of employees who are subject to the provisions of this part.”</p> <p>Section 655.4 defines “covered employee” as “a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part.”</p>

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7	Does this transit system conduct non-DOT drug and/or alcohol testing under its own authority, for instance, post-accident testing in situations not required by FTA or pre-employment testing for everybody, including clerical workers?	<p>Section 655.15 states: “Policy Statement contents. . . . The statement must be made available to each covered employee, and shall include the following: . . .</p> <p>(j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.”</p> <p>Section 40.13 states: “(a) DOT tests must be completely separate from non-DOT tests in all respects.</p> <p>(b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test.</p> <p>(c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing.”</p>
8	How does this transit system ensure that Federal Drug Testing Custody and Control Forms (CCF) and DOT Alcohol Testing Forms (ATF) are not used for non-DOT tests?	Section 40.13(f) states: “As an employer, you must not use the CCF [Federal Drug Testing Custody and Control Form] or the ATF [The DOT Alcohol Testing Form] in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.”
9	Before performing a drug or alcohol test, how does the transit system inform each employee of the testing authority (i.e., FTA authority, transit system authority)?	Section 655.17 states: “Before performing a drug or alcohol test under this part, each employer shall notify a covered employee that the test is required by this part. No employer shall falsely represent that a test is administered under this part.”

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10	What arrangements have been made to conduct drug and alcohol tests after normal business hours and on weekends?	Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."
11	Have all transit system officials and supervisors authorized to make FTA reasonable suspicion testing referrals received appropriate training (at least 60 minutes of training on the indicators of probable drug use; and 60 minutes of training on the indicators of probable alcohol misuse)?	Section 655.14(b)(2) states: "Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse."
12	How do you document that all employees authorized to make FTA reasonable suspicion testing referrals have received training, and how long do you maintain those records ?	<p>Section 655.71(c) states: "The following specific records must be maintained: . . .</p> <p>(4) Records related to employee training: . . .</p> <p>(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug and alcohol testing based on reasonable suspicion."</p> <p>Section 655.71(b) states: "In determining compliance with the retention period requirement, each record shall be maintained for the specified minimum period of time as measured from the date of the creation of the record. Each employer shall maintain the records in accordance with the following schedule: . . .</p> <p>(2) Two years. Records related to the collection process and employee training."</p>

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13	NOW, I WOULD LIKE TO ASK SOME QUESTIONS ABOUT THE PRE-EMPLOYMENT DRUG TESTING PROCESS.	
14	At what point in the hiring process do you require applicants for safety-sensitive positions to pass a FTA pre-employment drug test?	Section 655.41(a)(1) states: "Before allowing a covered employee or applicant to perform a safety-sensitive function for the first time, the employer must ensure that the employee takes a pre-employment drug test administered under this part with a verified negative result. An employer may not allow a covered employee, including an applicant, to perform a safety-sensitive function unless the employee takes a drug test administered under this part with a verified negative result."
15	Who is responsible for ensuring that employees who transfer internally to safety-sensitive positions pass a FTA pre-employment drug test before performing safety-sensitive functions?	Section 655.41(b) states: "An employer may not transfer an employee from a non-safety-sensitive function to a safety-sensitive function until the employee takes a pre-employment drug test administered under this part with a verified negative result."
16	Who is responsible for ensuring that safety-sensitive employees who have not been in the random testing pool for 90 consecutive days or more pass a pre-employment drug-screening test before performing safety-sensitive functions?	Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."
17	NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT THE RANDOM SELECTION PROCESS.	
18	How does this transit system maintain up-to-date lists of safety-sensitive employees subject to random testing?	<p>Section 655.45(e) states: "Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made."</p> <p>The requirement of Section 655.45(e) that "each covered employee shall have an equal chance of being tested each time selections are made" can only be met by the transit system if all employees performing safety-sensitive duties are included in the random testing pool each time random selections are made.</p>

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19	Does this transit system employ a seasonal workforce, and if so, do you remove or maintain seasonal employees in the random testing pool when they are not working?	Section 655.41(d) states: "When a covered employee or applicant has not performed a safety-sensitive function for 90 consecutive calendar days regardless of the reason, and the employee has not been in the employer's random selection pool during that time, the employer shall ensure that the employee takes a pre-employment drug test with a verified negative result."
20	Does this transit system randomly test non-safety-sensitive employees under its own authority?	<p>Section 655.45(a) states "Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator."</p> <p>The requirement of Section 655.45(a) that "minimum annual percentage rate for random drug testing shall be 50 percent of covered employees", can only be assured if the pool contains only covered employees.</p> <p>Moreover, Section 40.347(b)(2), covering the operations of C/TPAs, explicitly states: "Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees."</p>

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21	Does this transit system or the C/TPA maintain safety-sensitive and non-safety sensitive employees in separate random testing pools?	<p>Section 655.45(a) states “Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.”</p> <p>The requirement of Section 655.45(a) that “minimum annual percentage rate for random drug testing shall be 50 percent of covered employees”, can only be assured if the pool contains only covered employees.</p> <p>Moreover, Section 40.347(b)(2), covering the operations of C/TPAs, explicitly states: “Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.”</p>
22	What random selection method is used by this transit system to select employees for FTA drug and alcohol testing?	<p>Section 655.45(e) states: “The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.”</p>

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23	How frequently does this transit system or the C/TPA make random selections?	<p>Section 655.45(e) states: “. . . Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.”</p> <p>Generating random selection lists infrequently increases the chance that employee turnover will make meeting Section 655.45(e) unattainable because the transit system does not have an effectively updated testing pool.</p> <p>The preamble to Part 655 states: “FTA believes that the public safety interest is promoted with random testing that is truly random and unpredictable. However, FTA believes that requiring random testing to be conducted at least quarterly strikes a reasonable balance while considering the rule's impact on employers in rural areas.”</p>
24	How does this transit system ensure that random selection lists are not accessed by unauthorized individuals?	<p>Section 655.71(a) states: “An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.”</p> <p>To ensure that the random testing process is not compromised, random testing lists should be transmitted by a secure means and only to individuals authorized to receive such information.</p>
25	Does this transit system conduct random testing on all work days, including holidays?	<p>Section 655.45(g) states: “Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed.”</p>

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26	Does this transit system conduct random testing during all work shifts (i.e., during all hours of operations)?	Section 655.45(g) states: "Each employer shall ensure that random drug and alcohol tests conducted under this part are unannounced and unpredictable, and that the dates for administering random tests are spread reasonably throughout the calendar year. Random testing must be conducted at all times of day when safety-sensitive functions are performed."
27	After being informed of the test requirement, how much time does an employee have to report to the collection site for a FTA random test?	Section 655.45(h) states: "Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately. If the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site immediately."
28	Who decides that an employee may be legitimately excused from random testing, and what are valid reasons?	<p>Section 655.45(e) states: ". . . Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made."</p> <p>The requirements in Section 655.45(e) can not be met if employees can be excused when they are legitimately at the work site and available for testing. A valid excusal from testing can result if an employee is not working the day of the test (e.g., vacation, long term disability, illness). Excused employees must be tested when they return to work provided the employee returns before the next random selection list is generated. For instance, if a new list is generated each week, the old list expires when the new list arrives. Likewise if a new list is generated each month or each quarter, the previous list expires when the new list is provided.</p>

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29	If an employee selected for an FTA random drug and/or alcohol test is not available on the test day, do you keep a record of why the individual was not available on the test day?	<p>Section 655.45(e) states: “. . . Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made”</p> <p>Written explanations for why employees are excused from testing ensure there is no bias in the random selection process.</p> <p>Section 655.71(c) states: “The following specific records must be maintained: (1) Records related to the collection process: . . . (ii) Documents relating to the random selection process.”</p>
30	Do you have a way to know if the employee arrived at the collection site in a timely manner? For, instance, does the collection site know who is coming for a test and when that individual should arrive?	<p>Section 655.45(h) states: “Each employer shall require that each covered employee who is notified of selection for random drug or random alcohol testing proceed to the test site immediately.”</p> <p>Section 40.191(a) states: “As an employee, you have refused to take a drug test if you fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer.”</p> <p>Section 40.61(a) states: “As the collector, you must take the following steps before actually beginning a collection: When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing.”</p>

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31	After the testing is complete, does this transit system maintain a copy of each random selection draw list (e.g., paper copy, electronic file)?	Section 655.71(c) states: "The following specific records must be maintained: (1) Records related to the collection process: (i) Collection logbooks, if used. (ii) Documents relating to the random selection process."
32	NOW, I WOULD LIKE TO ASK SOME QUESTIONS ABOUT POST-ACCIDENT TESTING.	
33	Are you notified of accidents that might necessitate post-accident testing?	Section 40.3 defines "Designated employer representative (DER)" as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs."
34	Who has the primary responsibility for assuring that post-accident testing is accomplished?	Section 40.3 defines "Designated employer representative (DER)" as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs."

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35	Who is responsible for documenting the decision-making process when a decision is made that post-accident testing is not required?	<p>Section 40.3 defines “Designated employer representative (DER)” as “An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.”</p> <p>Section 655.44(d) states: “The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.”</p>
36	Does the transit system use the federal (DOT) custody and control forms for post-accident testing <u>only</u> when an FTA testing threshold has been met, and a non-DOT form for all other post-accident testing?	<p>Section 40.47(a) states: “. . . as an employer, you are prohibited from using the CCF for non-DOT urine collections. You are also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations.”</p> <p>Section 40.227(a) states: “. . . as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.”</p>

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37	Does this transit system have some method to document the post-accident decision-making process, especially decisions not to conduct a drug and alcohol test following an accident that reaches an FTA threshold?	<p>Section 655.44(d) states: "The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test."</p> <p>Section 655.71(c) states: "The following specific records must be maintained: (1) Records related to the collection process: . . . (iv) Documents generated in connection with decisions on post-accident drug and alcohol testing."</p>
38	If a DOT drug and/or alcohol testing form is not used for a FTA post-accident test, do you know what the regulations require you to do to correct this flaw?	<p>Section 40.205(b)(2) states: "If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (i.e., a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. . . . You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier."</p> <p>Section 40.271(b)(2) provides similar requirements for correcting flaws in breath alcohol testing.</p>

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39	Whose responsibility is it to decide whether or not a FTA drug and alcohol post-accident test should be performed if there is a fatality in the accident?	<p>Section 655.44(a) states: “(1) Fatal accidents. (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident. Post-accident drug and alcohol testing of the operator is not required under this section if the covered employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1).”</p> <p>No discretion is permitted by FTA in determining if a surviving employee is to be post-accident tested after an accident involving a fatality.</p>
40	Who determines if a FTA post-accident testing threshold has been reached after an accident?	<p>Section 40.3 defines “Designated employer representative (DER)” as “An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.”</p> <p>Section 655.44(d) states: “The decision not to administer a drug and/or alcohol test under this section shall be based on the employer's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident. Such a decision must be documented in detail, including the decision-making process used to reach the decision not to test.”</p>

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41	Can you explain the term 'disabling damage' as it relates to post-accident testing?	<p>Section 655.4 defines the term "Disabling damage" as "damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.</p> <p>(1) Inclusion. Damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven.</p> <p>(2) Exclusions. (i) Damage that can be remedied temporarily at the scene of the accident without special tools or parts.</p> <p>(ii) Tire disablement without other damage even if no spare tire is available.</p> <p>(iii) Headlamp or tail light damage.</p> <p>(iv) Damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable."</p>
42	In addition to the driver of a transit vehicle, can other covered employees be post-accident tested under FTA authority? If so, under what circumstances?	<p>Section 655.44(a) states: "(1) Fatal accidents. . .</p> <p>(ii) The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision."</p> <p>Section 655.44(a) states: "(2) Nonfatal accidents.</p> <p>(i) ... The employer shall also drug and alcohol test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision."</p>

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43	Can an FTA post-accident drug test be performed on an employee who is unable to give consent due to death or unconsciousness?	<p>Section 655.44(a)(1)(i) states: “As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests on each surviving covered employee operating the mass transit vehicle at the time of the accident.”</p> <p>Section 40.61(b)(3) states: “You [the collector] must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may you catheterize a conscious employee. . . .”</p>
44	When would you commence drug and alcohol testing after an accident?	<p>Section 655.44(a) states: “(1) Fatal accidents. (i) As soon as practicable following an accident involving the loss of human life, an employer shall conduct drug and alcohol tests ...”</p> <p>(2) Nonfatal accidents. (i) As soon as practicable following an accident not involving the loss of human life in which a mass transit vehicle is involved, the employer shall drug and alcohol test ...”.</p> <p>Section 655.44(e) further states: “Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.”</p>
45	What would be the result if an employee fails to remain “readily available” for testing after an accident?	Section 655.44(c) states: “A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.”
46	NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT RETURN-TO-DUTY AND FOLLOW-UP TESTING	

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47	Does this transit system maintain a list of qualified SAPs readily available to assist employees?	<p>Section 655.62(a) states: "If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs."</p> <p>Section 40.287 states: "As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent."</p>
48	Who would be the person responsible for ensuring that an employee who had a positive drug or alcohol test, or refused a test, was referred to the Substance Abuse Professional for an evaluation, even if the employee is not eligible for reinstatement?	Section 655.62(a) states: "If a covered employee has a verified positive drug test result, or has a confirmed alcohol test of 0.04 or greater, or refuses to submit to a drug or alcohol test required by this part, the employer shall advise the employee of the resources available for evaluating and resolving problems associated with prohibited drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals (SAPs) and counseling and treatment programs."
49	Does this transit system have a second chance policy for employees who test positive on an FTA drug and/or alcohol test?	

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50	If an employee who failed or refused a FTA drug and or alcohol test is eligible to be reinstated, as determined by the SAP, who determines the employee is ready to take a Return-to-Duty test and return to safety-sensitive duties?	<p>Section 40.305 states: “(a) As the employer, if you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.</p> <p>(b) As an employer, you must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph (a) of this section. However, you are not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that you have the discretion to make, subject to collective bargaining agreements or other legal requirements.</p> <p>(c) As a SAP or MRO, you must not make a “fitness for duty” determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than you, who must decide whether to put the employee back to work in a safety-sensitive position.”</p>

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51	Does the transit system receive a written SAP evaluation of an employee's readiness to return to duty and a follow-up testing plan?	<p>Section 40.307 states: "(a) As a SAP, for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, you must establish a written follow-up testing plan. You do not establish this plan until after you determine that the employee has successfully complied with your recommendations for education and/or treatment."</p> <p>(b) You [the SAP] must present a copy of this plan directly to the DER (see Section 40.311(d)(9))."</p> <p>Section 40.311(d) states: "The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items: . . .</p> <p>(8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;</p> <p>(9) Follow-up testing plan. . . "</p>
52	Whose responsibility is it to determine the number of follow-up tests for an individual returning to duty?	<p>Section 40.307(c) states: "You are the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but your evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, you should require that the employee have follow-up tests for both drugs and alcohol."</p>
53	Do you review each return-to-duty plan/schedule submitted by the SAP?	<p>Section 40.309(a) states: "As the employer, you must carry out the SAP's follow-up testing requirements."</p> <p>In order to comply with Section 40.309(a), the employer must review and understand the SAP's return-to-duty plan for each employee.</p>

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54	Who is responsible for ensuring that the SAP's follow-up testing plan for each employee is followed?	Section 40.309(a) states: "As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP."
55	Whose responsibility is it to determine when an employee must actually go for a follow-up test?	<p>Section 40.309 states: "(a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.</p> <p>(b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice."</p> <p>Section 40.307(d)(3) states: "You [the SAP] are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is the employer's."</p>
56	Purely as a matter of best-practices data-gathering, do you do anything after a year to determine whether the employee continues to need follow-up testing, such as having the SAP evaluate the employees' continuing progress?	Section 40.307(f) states: "As the SAP, you may modify the determinations you have made concerning follow-up tests. For example, even if you recommended follow-up testing beyond the first 12-months, you can terminate the testing requirement at any time after the first year of testing."
57	NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT YOUR DRUG AND ALCOHOL INFORMATION SYSTEM AND METHODOLOGY.	
58	Does this transit system maintain all records related to the drug and alcohol program in a secure location with controlled access?	Section 655.71(a) states: "An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access."

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Num	Question	REGULATORY CITATIONS
59	Does this transit system document Reasonable Suspicion referrals?	Section 655.71(c) states: "The following specific records must be maintained: (1) Records related to the collection process: . . . (iii) Documents generated in connection with decisions to administer reasonable suspicion drug or alcohol tests."
60	Has this transit system obtained and reviewed documentation of the professional credentials of your MRO, SAP, laboratory, and collectors?	Section 40.15(b) states: "As an employer, you are responsible for ensuring that the service agents you use meet the qualifications set forth in this part (e.g., Section 40.121 for MROs). You may require service agents to show you documentation that they meet the requirements of this part (e.g., documentation of MRO qualifications required by Section 40.121(e))." Section 40.15(c) states: "You [the employer] remain responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when you use a service agent. If you violate this part or other DOT drug and alcohol testing regulations because a service agent has not provided services as our rules require, a DOT agency can subject you to sanctions. Your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct."
61	When an employee tests positive for an FTA alcohol test, how soon after the test is completed, and by what method, do you receive notice of the positive result?	Section 40.255(a)(5) states: "Immediately transmit the result directly to the DER in a confidential manner. (i) You [the BAT] may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents."

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Num	Question	REGULATORY CITATIONS
62	When an employee has a positive FTA drug test result, by what method and how soon after the test is verified does the MRO or C/TPA notify the transit system?	<p>Section 40.167 states: “As the MRO or C/TPA who transmits drug test results to the employer, you must comply with the following requirements:</p> <p>(a) You must report the results in a confidential manner.</p> <p>(b) You must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.</p> <p>(1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see Section 40.163).”</p> <p>Section 40.167(c) states: “You must transmit the MRO's report(s) of verified tests to the DER so that the DER receives it within two days of verification by the MRO.</p> <p>(1) You must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see 40.163(b) and (c)).</p> <p>(2) Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report.”</p>
63	Have the transit system and the MRO established a password or other verification method to ensure that verbal transmission of positive test results from the MRO is secure?	<p>Section 40.167(b) states: “You (the MRO) must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.</p> <p>(1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see Section 40.163).</p> <p>(2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification.”</p>

DRUG AND ALCOHOL PROGRAM MANAGER

Num	Question	REGULATORY CITATIONS
64	Does the transit system have a method to identify if the MRO or C/TPA has not provided a test result in reasonable period after the test?	Section 40.17 states: “. . . as an employer, you are responsible for obtaining information required by this part from your service agents. This is true whether or not you choose to use a C/TPA as an intermediary in transmitting information to you. For example, suppose an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in your receipt of the test result from an MRO or C/TPA. You must not assume that "no news is good news" and permit the applicant to perform safety-sensitive duties before receiving the result. This is a violation of the Department's regulations.”
65	Do you use a consortium or third-party administrator (C/TPA)?	
66	Does a C/TPA transmit MRO verified test results to the transit system? If so, does the C/TPA have written authorization from the transit system to transmit such information?	Section 40.345(a) states: “As a C/TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the employer chooses to have you do so. Each employer makes the decision about whether to receive some or all of this information from you, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT).”
67	NOW, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT CONTRACTORS THAT PROVIDE SAFETY-SENSITIVE SERVICES FOR THIS TRANSIT SYSTEM.	
68	Does this transit system utilize contractors who perform safety-sensitive duties?	

DRUG AND ALCOHOL PROGRAM MANAGER

Num	Question	REGULATORY CITATIONS
69	Do you maintain and update a list of your covered contractors?	<p>Section 40.11 states: “(b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.</p> <p>(c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.”</p> <p>Section 655.81 states: “A grantee shall ensure that the recipients of funds under 49 U. S. C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part [49 CFR Part 655].”</p> <p>Correctly identifying contractors who must comply with FTA drug and alcohol testing requirements is the first step in the oversight process.</p>

DRUG AND ALCOHOL PROGRAM MANAGER

Num	Question	REGULATORY CITATIONS
70	Does your agreement with your contractor(s) contain a requirement that they comply with the FTA drug and alcohol testing program regulations?	<p>Section 40.11 states: “(b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.</p> <p>(c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.”</p> <p>Section 40.341 states: “(a) As a service agent, the services you provide to transportation employers must meet the requirements of this part and the DOT agency drug and alcohol testing regulations.</p> <p>(b) If you do not comply, DOT may take action under the Public Interest Exclusions procedures of this part (see Subpart R of this part) or applicable provisions of other DOT agency regulations.”</p>
71	How do you monitor the drug and alcohol programs of your contractors?	<p>Section 40.11(b) states: “You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.”</p> <p>Section 655.81 states: “A grantee shall ensure that the recipients of funds under 49 U. S. C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part [49 CFR Part 655].”</p> <p>Section 655.73(i) states: “An employer may disclose drug and alcohol testing information required to be maintained under this part, pertaining to a covered employee, to the State oversight agency or grantee required to certify to FTA compliance with the drug and alcohol testing procedures of 49 CFR Parts 40 and 655.”</p>

DRUG AND ALCOHOL PROGRAM MANAGER

Num	Question	REGULATORY CITATIONS
72	Did you receive this year's Drug and Alcohol MIS reports or MIS data from all of your contractors in a timely manner?	Section 655.72(c) states: "Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf."
73	Are your covered contractors in compliance with the FTA drug and alcohol rules?	<p>Section 40.11(b) states: "You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations."</p> <p>Section 655.81 states: "A grantee shall ensure that the recipients of funds under 49 U. S. C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part [49 CFR Part 655]."</p>
74	What contractual remedies do you have if your safety-sensitive contractor is not in compliance with FTA drug and alcohol testing regulations?	<p>Section 40.11(b) states: "You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations."</p> <p>Section 655.81 states: "A grantee shall ensure that the recipients of funds under 49 U. S. C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part [49 CFR Part 655]."</p>
75	What action(s) would this transit system take if a contractor were not in compliance with FTA drug and alcohol testing regulations?	<p>Section 40.11(b) states: "You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations."</p> <p>Section 655.81 states: "A grantee shall ensure that the recipients of funds under 49 U. S. C. 5307, 5309, 5311 or 23 U.S.C. 103(e)(4) comply with this part [49 CFR Part 655]."</p>
76	NOW, I WOULD LIKE TO ASK YOU A FEW QUESTIONS ABOUT THIS COMPANY'S DRUG AND ALCOHOL MIS REPORT.	

DRUG AND ALCOHOL PROGRAM MANAGER

Num	Question	REGULATORY CITATIONS
77	How does this transit system assemble an annual summary of the results of the drug and alcohol program, and as needed prepare the Annual Drug and Alcohol MIS report, and did you lead or assist in the preparation?	Section 655.72 states: “(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year. (b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs. (c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.”
78	Does the DAPM or other responsible individual review the annual summary of the results of the drug and alcohol program, and as required, review the annual MIS report for content and completeness?	Section 655.72 states: “(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year. (b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs. (c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.”
79	Did this transit system and its contractors achieve their FTA random drug and alcohol testing goals last year?	Section 655.45(a) states: “Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees; the random alcohol testing rate shall be 10 percent. As provided in paragraph (b) of this section, this rate is subject to annual review by the Administrator.”

DRUG AND ALCOHOL PROGRAM MANAGER

Num	Question	REGULATORY CITATIONS
80	FINALLY, AND PURELY AS A MATTER OF INFORMATION GATHERING AND NOT REGULATORY COMPLIANCE, I WOULD LIKE TO ASK A FEW QUESTIONS ABOUT ANY POLICIES AND PROCEDURES YOUR SYSTEM MAY HAVE CONCERNING THE USE OF OVER-THE-COUNTER AND PRESCRIPTION DRUGS BY SAFETY-SENSITIVE EMPLOYEES.	
81	Does your system have a written policy and/or procedure concerning the safe use of OTC and/or prescription drugs by safety-sensitive employees?	AUDITOR - ASK IF YOU MAY TAKE COPIES OF SAMPLE MATERIALS FOR FTA FILES
82	Under the policy, who is responsible for determining whether an OTC or prescription drug may be used safely by an employee while performing safety-sensitive duties? For instance, is the employee responsible, or the employee's physician, or a medical practitioner employed by the transit system?	AUDITOR - ASK IF YOU MAY TAKE COPIES OF SAMPLE MATERIALS FOR FTA FILES
83	How long has your system had such a policy, and when was it first committed to writing and communicated to the employees?	AUDITOR - ASK IF YOU MAY TAKE COPIES OF SAMPLE MATERIALS FOR FTA FILES
84	Do you discuss the policy and the safe use of prescription and OTC drugs during your required minimum one-hour training program of drug awareness for safety-sensitive employees?	AUDITOR - ASK IF YOU MAY TAKE COPIES OF SAMPLE MATERIALS FOR FTA FILES

DRUG AND ALCOHOL PROGRAM MANAGER

Num	Question	REGULATORY CITATIONS
85	Was the Drug and Alcohol Program Manager prepared for the audit team, and did the DAPM cooperate with the audit team and facilitate the audit process, including producing the required records?	<p>Section 655.73(c) states: “An employer shall permit access to all facilities utilized and records compiled in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.”</p> <p>Section 655.73(d) states: “An employer shall disclose data for its drug and alcohol testing programs, and any other information pertaining to the employer's anti-drug and alcohol misuse programs required to be maintained by this part, to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems, upon the Secretary's request or the respective agency's request.”</p>
86	THAT WAS THE LAST QUESTION. THANK YOU FOR YOUR TIME AND INPUT.	